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IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1946.

A. RAY OLIVER, Executor of the Estate of Lola Castlio Oliver, Deceased, A. RAY OLIVER and B. IRENE CASTLIO,

Petitioners,

vs.

UNITED STATES OF AMERICA,

Respondent.

No. [redacted] 151

PETITION FOR A WRIT OF CERTIORARI

To the United States Circuit Court of Appeals for the Eighth Circuit

and

BRIEF IN SUPPORT THEREOF.

WILLIAM L. IGOE,
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INDEX.

Page

Subject Index.

Petition for writ of certiorari to the United States Circuit Court of Appeals for the Eighth Circuit... 1
Opinion of the court below..... 2
Jurisdiction 2
Constitutional provision and statute involved..... 2
Statement 3
Questions presented 6
Specifications of error to be urged..... 7
Reasons relied on for the allowance of the writ..... 8
Prayer 18
Appendix 19

Table of Cases Cited.

Chicago Great Western Ry. Co. v. Kemper, 256 Mo. 279, 166 S. W. 291..... 17
Danforth v. United States, 308 U. S. 271, 60 S. Ct. 231 .....9, 13
Davis v. Wakelee, 156 U. S. 680, 15 S. Ct. 555..... 16
Holland v. Spell, 144 Ind. 561, 42 N. E., l. c. 1015.... 17
Horne v. Beattie, 167 La. 647, 120 So. 38..... 16
Mauritz v. Schwind, 101 S. W. (2d) 1085 (Tex. C. A.) 16
Muschany v. United States and Andrews v. United States, 324 U. S. 49, 65 S. Ct. 442.....4, 13
Officer v. J. L. Owens & Co., 252 Fed. 337..... 16
Seaboard Airline Ry. Co. v. United States, 261 U. S. 299, 43 S. Ct. 354.....8, 9, 15, 17
Shoshone Tribe of Indians v. United States, 299 U. S. 476, 57 S. Ct. 244.....8, 17
Southern Surety Co. v. Illinois Powder Mfg. Co., 31 S. W. (2d) 314 (Tex. C. A.)..... 16
State ex rel. Steubenville Ice Co. v. Merrell, Director of Highways, 127 Ohio St. 453, 189 N. E. 116..... 15

United States v. Baugh, 149 Fed. (2d) 190 ..... 7, 11, 12, 13, 14, 17, 18
United States v. North Carolina, 136 U. S. 211, 10 S. Ct. 920 15
United States v. Rogers, 255 U. S. 163, 41 S. Ct. 281 ..... 8, 15, 17
United States v. Sargent, 162 Fed. 81, 89 C. C. A. 81, dismissed 215 U. S. 618, 30 S. Ct. 410 15
Van Wagoner, Highway Commissioner, v. Morrison, 279 Mich. 285, 271 N. W. 760 15

Statutes Cited.

Constitution of the United States, Amendment V 2, 8, 9
Declaration of Taking Statute, 40 U. S. C. A., Sec. 258a, c. 307, Sec. 1, 46 Stat. 1421 ..... 2, 3, 8, 9, 14, 16, 19
Judicial Code, Sec. 240 (a), as amended by Act of Feb. 13, 1925, c. 229, sec. 1, 43 Stat. 938 [28 U. S. C. A., Sec. 347 (a)] 2

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PETITION FOR A WRIT OF CERTIORARI

To the United States Circuit Court of Appeals for the Eighth Circuit

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BRIEF IN SUPPORT THEREOF.

To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

Come now A. Ray Oliver, Executor of the Estate of Lola Castlio Oliver, deceased, who succeeded the said Lola Castlio Oliver as a party (appellant) in a certain proceeding pending in the Circuit Court of Appeals for the Eighth Circuit, by an order entered in said court on the 17th day

of May, 1946, A. Ray Oliver, and B. Irene Castlio, and respectfully petition this Honorable Court to grant a writ of certiorari to review the opinion and judgment of the United States Circuit Court of Appeals for the Eighth Circuit, rendered and entered on the 9th day of April, 1946, in a cause entitled Lola Castlio Oliver, A. Ray Oliver, and B. Irene Castlio, Appellants, vs. United States of America, Appellee, designated in that Court as No. 13174 Civil.

OPINION OF THE COURT BELOW.

The opinion of the United States Circuit Court of Appeals for the Eighth Circuit upon which its judgment was entered has not yet been reported but is set out in the Record (R. p. 79).

JURISDICTION.

The jurisdiction of this Court is invoked by Section 240(a) of the Judicial Code, as amended by the Act of February 13, 1925, c. 229, sec. 1, 43 Stat. 938 (28 U. S. C. A., Sec. 347[a]).

The judgment of which review is sought was entered on April 9, 1946, but did not become final until April 30, 1946, when petitioners' (appellants) Petition for Rehearing was denied (R. p. 100).

CONSTITUTIONAL PROVISION AND STATUTE INVOLVED.

The constitutional provision involved is Amendment V to the Constitution of the United States which provides in part "* * * nor shall private property be taken for public use, without just compensation".

The statutory provision involved is 40 U. S. C. A., Sec. 258a, c. 307, Sec. 1, 46 Stat. 1421. This statute is filed herewith as an appendix.

STATEMENT.

The petitioners were the owners of certain land located in St. Charles County, Missouri. On the 24th day of December, 1940, they signed a written offer designated an "Option to Purchase Land" to sell this land to the United States of America for the sum of $70,000 (R. pp. 36-38). This offer was accepted by the Government on the 28th day of December, 1940 (R. p. 38).

The Government assumed possession as it had a right to do under the contract and has remained in continuous possession ever since. But subsequently and on the 6th day of June, 1941, it repudiated its agreement and filed a condemnation proceeding against the petitioners in the United States District Court for the Eastern District of Missouri to acquire title to the land in that manner (R. pp. 2, 3). This proceeding was in the usual form and was brought pursuant to the Act of Congress approved August 1, 1888 (25 Stat. 357, 40 U. S. C. A., Sec. 257), and the Act of Congress approved July 2, 1917 (50 U. S. C. A., Sec. 171), as amended, which authorized the acquisition by the Secretary of War of land suitable and necessary for military purposes (R. pp. 4-9). On the same day the condemnor filed a Declaration of Taking which recited, among other things (R. p. 10):

> "1. (a) The lands hereinafter described are taken under and in accordance with the Act of Congress approved February 26, 1931 (46 Stat. 1421, 40 U. S. C. A., Sec. 258a), * * *."

Just compensation for the land taken was estimated therein to be $21,500.00 and that sum was deposited in the registry of the court (R. p. 14). Also on the same day an order was entered vesting the title to the land in question in the Government (R. pp. 15-17).

The landowners filed an answer asserting that the parties to the proceeding had entered into a contract prior to the filing of the suit and requesting the court to fix the award in the condemnation proceedings at the amount mentioned in the contract, to-wit, $70,000, with interest thereon at six per cent (6%) per annum from the date of the acceptance of the contract, to-wit, December 28, 1940 (R. pp. 17-26).

No proceedings were had in this cause to fix the value of the property taken until this Honorable Court, in the companion cases of **Muschany v. United States** and **Andrews v. United States**, 324 U. S. 49, 65 S. Ct. 442, decided that the so-called Options to Purchase Land were valid and, in effect, fixed the amount of the award in each condemnation proceeding at the amount agreed upon in the Option to Purchase Land applicable to each such proceeding. Thereafter, and on the 6th day of May, 1945, the Government filed a motion requesting the court to enter a judgment condemning the property and fixing the landowners' compensation at the sum of $70,000 and directing the condemnor to pay into the registry of the court the deficiency of $48,500, but without allowing the landowners any interest (R. pp. 27, 28). On the 2nd day of May, 1945, the petitioners filed an answer to the Government's motion requesting the court to enter a judgment condemning the land and fixing the compensation for the taking of the land at $70,000 but praying the court to also award the petitioners interest at the rate of six per cent (6%) per annum upon said $70,000 from the date of taking on or about December 28, 1940, to the making of the deposit ($21,500) at the time of the filing of the Declaration of Taking on June 6, 1941, and with interest at the same rate on the deficiency of $48,500 from June 6, 1941, until the payment of said deficiency (R. pp. 29, 30). On May 17, 1945, the Government paid into court the deficiency of $48,500 (R. p. 52).

Because of the large number of cases pending in the said United States District Court arising under the same circumstances and because of the widespread interest therein, all of the so-called Weldon Spring cases were submitted at the same time to a three-judge court consisting of the three United States District Judges sitting in the Eastern Judicial District of Missouri (R. pp. 32-46), but each Judge ruled individually on each of said cases pending before him.* Since all of these cases were submitted at the same time, no proof was required by the District Court from each individual landowner of the date of the taking of possession of his tract by the Government, the Court saying that if and when it is determined that the landowners are entitled to interest, they will be given an opportunity to make a showing in each case as to when the Government took possession (R. pp. 45, 46). On May 14, 1945, the District Court, in the proceeding to condemn the land of the petitioners, entered a judgment condemning the land and fixing the compensation at the sum mentioned in the contract, to-wit, $70,000, but denying the landowners any sum as interest (R. pp. 47-52). Subsequently, the petitioners took an appeal in this cause to the United States Circuit Court of Appeals for the Eighth Circuit (R. p. 1). On April 9, 1946, said United States District Court of Appeals filed its opinion and entered a judgment in said cause affirming the judgment of the District Court (R. pp. 79-86). On the same day memorandum opinions were filed by said United States Circuit Court of Appeals in appeals from companion cases entitled and designated United States of America, appellant, v. Edgar S. Albrecht et al., appellees, No. 13,223, Civil; United States of America, appellant, v. Q. W. S. S.

*Judge Moore and Judge Duncan ruled that the landowners were entitled to interest in the cases pending before them. Judge Moore's opinion on the subject is reported at 61 F. Supp. 199. Judge Duncan filed no opinion. Judge Hulen ruled that the landowners were not entitled to interest in an opinion reported at 60 F. Supp. 741. The instant case is one of several pending before Judge Hulen.

Realty & Investment Company, appellee, No. 13,226; United States of America, appellant, v. Edward J. Linnenbringer et al., appellees, No. 13,227, and United States of America, appellant, v. Dennis B. Pitman et al., appellees, No. 13,228. These last mentioned appeals were decided upon the basis of the court's opinion in this cause.

Thereafter, and on the 23rd day of April, 1946, and within the time allowed by the rules of the said United States Circuit Court of Appeals, the petitioners filed their Petition for Rehearing (R. pp. 88-89). This petition was on the 30th day of April, 1946, denied by the said United States Circuit Court of Appeals, on which day said judgment of the said United States Circuit Court of Appeals in this cause became final (R. p. 100).

The duly certified record, including all the proceedings in this cause in said District Court and in said United States Circuit Court of Appeals, is filed herewith under separate cover, together with the requisite number of printed copies thereof.

QUESTIONS PRESENTED.

The questions presented by this Petition for a Writ of Certiorari are:

1. Did the petitioners, as landowners, waive their right to interest from the date of taking to the date of payment by entering into the contract in question?

2. Were the petitioners, as landowners, denied their statutory rights by the failure to allow them interest from the date of taking to the date of payment of the award?

3. Were the petitioners, as landowners, denied just compensation guaranteed them by the Constitution of the United States by the failure to allow them such interest?

SPECIFICATIONS OF ERROR TO BE URGED.

The Circuit Court of Appeals erred:

1. In construing the contract as fixing the total amount to which petitioners, as landowners, were entitled because of the taking of their land.

2. In holding that the landowners by their successful defense of the contract in the condemnation proceeding thereby changed the nature of the proceedings so as to preclude recovery of interest for the period between the taking of the property and payment.

3. In refusing to allow interest against the Government for delay.

4. In refusing to recognize that a statute existed which required the Government to pay the landowners interest.

5. In refusing to hold that the Government was estopped to deny the landowners' right to interest.

6. In refusing to accord the landowners "just compensation" as required by the Constitution of the United States.

7. In distinguishing the opinion of the Fifth Circuit Court of Appeals in **United States v. Baugh**, 149 Fed. (2d) 190.

REASONS RELIED ON FOR THE ALLOWANCE OF THE WRIT.

I.

The Court of Appeals erred in construing the contract as fixing the total amount to which petitioners, as landowners, were entitled because of the taking of their land.

The Court recognized the well established rule that "just compensation" guaranteed by the Fifth Amendment to the Constitution of the United States to a landowner whose property has been taken for public purposes, where the taking precedes the payment, includes interest as well as the fair market value of the property at the time of the taking.

> Shoshone Tribe of Indians v. United States, 299 U. S. 476, 57 S. Ct. 244;
> Seaboard Airline Ry. Co. v. United States, 261 U. S. 299, 43 S. Ct. 354;
> United States v. Rogers, 255 U. S. 163, 41 S. Ct. 281.

This rule has been adopted by Congress in the enactment of 40 U. S. C. A., Sec. 258a, under which the government proceeded in this case, which provides in part as follows:

> "Upon the filing (of) said Declaration of Taking and of the deposit in the Court, * * * said compensation shall be ascertained * * * and the said judgment shall include, as part of the just compensation awarded, interest at the rate of six per centum per annum on the amount finally awarded as the value of the property as of the date of taking, from said date to the date of payment; but interest shall not be allowed on so much thereof as shall have been paid into the Court."

Interest is awarded to compensate the owner for loss of possession of his property or postponement of the en-

joyment of the money received for the taking of his property.

Seaboard Airline Ry. Co. v. United States, 261 U. S. 299, 43 S. Ct. 354.

The Court of Appeals also recognized the fact that in condemnation proceedings the Government and the landowner may by contract agree on the value of the land rather than to have the same fixed by a commissioners' award or a jury verdict. Such was decided by this Court in **Danforth v. United States**, 308 U. S. 271, 60 S. Ct. 231. The Court of Appeals quite correctly said that in drawing such a contract the parties could provide that the amount agreed upon therein should constitute the fair market value of the land or could stipulate that the amount agreed upon should include not only the fair market value of the land at the time of taking but other items of damage as well, i. e., interest, when the taking occurs before the payment. But it is submitted that the Court of Appeals erred in construing the contract in question as evidencing the intent of the parties thereto that the $70,000 agreed upon should include all items of just compensation and not merely the agreed value of the land at the time of the taking.

Since by virtue of the Fifth Amendment to the Constitution of the United States and 40 U. S. C. A., Sec. 258a, a landowner whose property is taken before payment is made is entitled to interest as well as the fair market value of the property at the time of taking, it follows that the landowners in the instant case were entitled to such interest unless they waived their right to the same by entering into a contract. A reading of the contract reveals that no such waiver is contained therein. In fact, interest is not mentioned anywhere within its four corners (R. pp. 36-38). The $70,000 is referred to variously as "the gross

sales price" (R. p. 36), "the agreed purchase price" (R. p. 37) and "the agreed valuation" (R. p. 37). If anything, these terms are more closely related in meaning to the fair market value at the time of taking than they are to interest. Certainly that is so of the phrase "the agreed valuation". It should be noted that the contract expressly provided that if the title to the land was not approved by the Attorney General, the Government should acquire the land by condemnation proceedings and in such proceedings "a consent verdict fixing the award at the agreed valuation" should be entered (R. p. 37). If such had occurred and if the Government had delayed payment of the award, no one would deny the right of the landowners to interest for the delay in payment. This indicates that the amount agreed upon in the contract served the same purpose as an award, which is always the fair market value of the property at the time of the taking, and does not include interest for delay in payment of the award.

The Court of Appeals' conclusion that the amount fixed in the contract included interest as well as the fair market value at the time of the taking seems to be based in the main, if not entirely, upon the fact that by the contract the Government was granted the right of immediate possession as well as title to the land, and upon the construction by the Court of Appeals that the contract did not fix a time within which payment was required. From this the Court apparently believed that it was the right of the Government under the contract to acquire possession and retain it indefinitely without paying for the use of the property, which, incidentally, is almost what the Government did. No such construction of the contract is justified either in the letter or the spirit of the instrument. It is true that the contract did give the Government immediate possession, but by its very terms the Government could remain in possession only "* * * until such time as said land is

conveyed to the Government * * *, the title approved * * * and the agreed purchase price paid by the Government * * *" (R. p. 37). A subsequent provision in the contract required the Government to make payment as follows (R. p. 37):

> "Upon furnishing of final certificate of title * * * the agreed purchase price above mentioned will be paid by the Government to the undersigned."

From this it will be seen that although the Government obtained the right of immediate possession under the contract, it could only remain in possession until it paid the agreed purchase price and this it was required to do when a final certificate of title was furnished it by the landowners, and it could not remain in possession of the land indefinitely under the contract.

It is submitted that the proper construction to be laid upon the contract is that which the Fifth Circuit Court of Appeals in **United States v. Baugh**, 149 Fed. (2d) 190, gave to a similar contract. There condemnation proceedings were instituted by the United States of America against certain land which it desired to acquire for military purposes. After the petition had been filed the Government and the landowners entered into a stipulation agreeing that the court "* * * is hereby authorized and petitioned to enter without further notice a final judgment and decree in said action in accordance with the prayer in plaintiff's petition herein, or any declaration of taking which may hereafter be filed by the plaintiff, vesting the title to the above described property in the United States of America, and adjudging just compensation for the lands taken, to be in the sum of * * *." About seven months elapsed between the execution of this stipulation and the payment of the amount due thereunder. In holding that the landowners were entitled to interst in addition to the

amount agreed upon in the stipulation for the period of time between the signing of the same and the payment of the amount agreed upon, the court said (149 Fed. [2d], l. c. 193):

> "• • • when the parties reduced to writing a stipulation fixing just compensation there seems to be no reason to conclude that the landowner **impliedly** waived any legal right.
>
> "• • • But the Government failed to pay for seven or eight months thereafter, and there is neither proof nor presumption that the landowners intended to waive interest in the future, particularly for such an indefinite and unreasonable period, and such a waiver cannot be read into the agreement. Their right to have interest is found in the Constitution and is neither found nor lost in the contract." (Emphasis of the court.)

Since more than four years elapsed between the signing of the contract in the case at hand and the payment of the amount thereunder, it is interesting to observe that the Court of Appeals in **United States v. Baugh** found that a delay in payment of seven or eight months was an unreasonable period.

Many landowners who formerly lived within the area taken by the Government are adversely affected by the decision of the Court of Appeals, as their right to interest is based on identical facts and legal principles as are found in this proceeding. The determination of this case is a matter of great public interest.

II.

The Court of Appeals fell into error when it held that the landowners, by their successful defense of the validity of the purchase contract, changed the nature of the proceeding instituted by the Government. When the Government repudiated the contract, the landowners were ac-

corded the election of recognizing the breach and allowing the fair market value of the property to be fixed by a commissioners' award or by a jury verdict, or if they did not want to run the risk of such litigation of having the fair market value established at the amount agreed upon in the contract. The landowners elected to take the latter course. This illustrates that the contract in the case at hand, in fixing the fair market value of the property at $70,000, served the function of a commissioners' award or a jury verdict. Such was the interpretation placed by this Court upon a similar contract entered into between the Government and the landowners and which was also repudiated by the Government by the bringing of a condemnation proceeding. **Danforth v. United States,** 308 U. S. 271, 60 S. Ct. 231. There this Court said (308 U. S., l. c. 281):

> "We construe the accepted offer as an agreement to fix the price at the named figure for the easement sought. * * * The effect of such an agreement is to fix the value of the easement when the authority of the court is invoked against a party to the agreement to acquire good title."

And in the companion case of **Muschany v. United States,** 324 U. S. 49, 65 S. Ct. 442, this Court, referring to a contract identical in form to the one in the case at hand, said (65 S. Ct., l. c. 445):

> "The option * * * provides for an agreed valuation at the option price in case of condemnation."

The fixing of the fair market value of the property by the contract instead of by a commissioners' award or a jury verdict did not in anywise change the nature of the condemnation proceeding brought by the Government. As was said in **United States v. Baugh,** supra (149 Fed. [2d], l. c. 192):

"The stipulation merely had the effect of relieving the Government from having to make proof as to what was just compensation and of running the risk of having an amount fixed which might be unsatisfactory. The stipulations eliminated controversies, but otherwise the condemnation suit proceeded to final judgment."

Since the land in the case at hand was taken over four years before payment was made, if the landowners had elected to recognize the breach of the contract by the Government and had permitted commissioners or a jury to fix the fair market value of the property, beyond any question they would have been entitled to interest for the time during which payment was postponed in addition to the fair market value of the property. Having elected, however, to uphold the contract and to have the fair market value fixed in accordance with its terms, the only effect upon the proceeding is to eliminate the necessity of a commissioners' award or a jury verdict to fix the value of the property, and the landowners are entitled to interest for the postponed payment in the same manner in which they would have been entitled to interest had the value of the property been fixed by award or verdict. A reading of the entire record of the case shows that the action was instituted as a condemnation proceeding pursuant to the Federal Statutes in such cases made and provided, including the Declaration of Taking statute (40 U. S. C. A., Sec. 258a), which expressly requires the payment of interest for delayed payment. And the proceeding continued to its end in compliance with condemnation practice with the single exception of the agreement between the parties being substituted for the commissioners' award or jury verdict.

III.

The Court of Appeals erred in refusing to allow interest against the Government for delay. It is true that as a general rule interest will not be allowed against a sovereign in the absence of a statute or express contract imposing the same. **United States v. North Carolina,** 136 U. S. 211, 10 S. Ct. 920; **United States v. Rogers,** supra; **Seaboard Airline Ry. Co. v. United States,** supra. But it is equally well settled that because of the constitutional guaranty of "just compensation," this rule is not applied in condemnation cases where the property is taken before payment is made.

Seaboard Airline Ry. Co. v. United States, supra;
United States v. Sargent, 162 Fed. 81, 89 C. C. A. 81, dismissed 215 U. S. 618, 30 S. Ct. 410;
Van Wagoner, Highway Commissioner, v. Morrison, 279 Mich. 285, 271 N. W. 760;
State ex rel. Steubenville Ice Co. v. Merrell, Director of Highways, 127 Ohio St. 453, 189 N. E. 116.

In **Seaboard Airline Ry. Co. v. United States,** supra, this Court said:

> "The rule above referred to that, in the absence of agreement to pay or statute allowing it, the United States will not be held liable for interest on unpaid accounts and claims, does not apply here. The requirement that 'just compensation' shall be paid is comprehensive and includes all elements and no specific command to include interest is necessary when interest or its equivalent is a part of such compensation."

IV.

But even if the rule that interest is not allowed against a sovereign in the absence of an express contract or statute were applicable to the case at hand, such a statute

existed. See 40 U. S. C. A., Sec. 258a. In fact, the Government elected to proceed under the statute by filing a Declaration of Taking (R. pp. 10-14). The decision of the Court of Appeals clearly deprives the landowners of their statutory rights.

V.

The Court of Appeals erred in refusing to hold that the Government was estopped from denying the landowners' right to interest. Upon the institution of the condemnation proceeding by the Government, it filed a Declaration of Taking pursuant to the express terms of 40 U. S. C. A., Sec. 258a (R. pp. 10-14), and obtained valuable benefits from invoking that statute because an order and judgment was entered upon the Declaration of Taking upon the same day the condemnation proceeding was filed, investing the Government with immediate possession and title to the land in question (R. pp. 15-17). But this statute also expressly required the Government to pay interest to the landowners upon the difference between the amount paid into Court at the time of the filing of the Declaration of Taking and the amount finally awarded the landowners. It is fundamental that a party will not be permitted to enjoy the benefits of a transaction and repudiate the obligations arising therefrom, especially where the other party to the transaction has been placed at a disadvantage, as the landowners were in the case at hand by being deprived of the possession and title to their property. **Davis v. Wakelee**, 156 U. S. 680, 15 S. Ct. 555; **Officer v. J. L. Owens & Co.**, 252 Fed. 337; **Horne v. Beattie**, 167 La. 647, 120 So. 38; **Mauritz v. Schwind**, 101 S. W. (2d) 1085 (Tex. C. A.); **Southern Surety Co. v. Illinois Powder Mfg. Co.**, 31 S. W. (2d) 314 (Tex. C. A.), in which the Court held that where a party invokes a statute as the basis of his claim, he must take the statute as a whole.

A comparable situation has arisen occasionally in condemnation proceedings where a landowner accepts money awarded to him in condemnation proceedings and then undertakes to deny the validity of the proceedings. In such a case the Supreme Court of Missouri, in **Chicago Great Western Ry. Co. v. Kemper**, 256 Mo. 279, 166 S. W. 291, adopted the following language found in the case of **Holland v. Spell**, 144 Ind. 561, 42 N. E. l. c. 1015:

> "We can conceive no good reason why he should, in good conscience, be permitted to receive all the benefits of the proceeding, and, while holding them, deny that the proceeding is effectual to create the burdens corresponding to such benefits."

VI.

By refusing the landowners' interest the Court of Appeals denied them "just compensation" guaranteeed by the Fifth Amendment to the Constitution of the United States. This point has already been discussed heretofore. In so doing, the Court of Appeals refused to follow the latest decisions of this Honorable Court as to the meaning of "just compensation".

Shoshone Tribe of Indians v. United States, 299 U. S. 476, 57 S. Ct. 244;
Seaboard Airline Ry. Co. v. United States, 261 U. S. 299, 43 S. Ct. 354;
United States v. Rogers, 255 U. S. 163, 41 S. Ct. 281.

VII.

The Court of Appeals erred in distinguishing the decision of the Fifth Circuit Court of Appeals in **United States v. Baugh**, 149 Fed. (2) 190. Rather indecisively the Court of Appeals in the instant case said that the **Baugh** case was distinguishable because "* * * the contract there involved was interpreted by the Court as fixing only the

fair value of the land for the purpose of a condemnation then proceeding" (R. p. 86). It is true that the contract in the **Baugh** case was entered into after the condemnation proceeding was instituted, whereas in this case it was entered into before the proceedings were begun. But, of course, distinctions of no significance are to be given no weight. What difference did it make in the determination of the question of whether or not the landowners were entitled to interest, that the stipulation between the parties to the litigation was executed before or after the condemnation proceedings were begun? The question is to be determined by these factors and these alone: (1) was there a taking prior to payment, and (2) if so, did the contract of the parties waive the landowners' right to interest? Obviously, the time of the execution of the contract as related to the commencement of the proceedings is of no importance whatever in the determination of this question. A clear conflict exists between the opinion of the Eighth Circuit Court of Appeals in the instant case and the Fifth Circuit Court of Appeals in the **Baugh** case.

PRAYER.

Wherefore, your petitioners pray, for the reasons stated, that this petition for certiorari be granted.

Respectfully submitted,

WILLIAM L. IGOE,
RICHMOND C. COBURN,
Counsel for Petitioners.

APPENDIX.

Title 40, U. S. C. A., § 258a:

In any proceeding in any court of the United States outside of the District of Columbia which has been or may be instituted by and in the name of and under the authority of the United States for the acquisition of any land or easement or right of way in land for the public use, the petitioner may file in the cause, with the petition or at any time before judgment, a declaration of taking signed by the authority empowered by law to acquire the lands described in the petition, declaring that said lands are thereby taken for the use of the United States. Said declaration of taking shall contain or have annexed thereto:

(1) A statement of the authority under which and the public use for which said lands are taken.

(2) A description of the lands taken sufficient for the identification thereof.

(3) A statement of the estate or interest in said lands taken for said public use.

(4) A plan showing the lands taken.

(5) A statement of the sum of money estimated by said acquiring authority to be just compensation for the land taken.

Upon the filing said declaration of taking and of the deposit in the court, to the use of the persons entitled thereto, of the amount of the estimated compensation stated in said declaration, title to the said lands in fee simple absolute, or such less estate or interest therein as is specified in said declaration, shall vest in the United States of America, and said lands shall be deemed to be condemned and taken for the use of the United States,

and the right to just compensation for the same shall vest in the persons entitled thereto; and said compensation shall be ascertained and awarded in said proceeding and established by judgment therein, and the said judgment shall include, as part of the just compensation awarded, interest at the rate of 6 per centum per annum on the amount finally awarded as the value of the property as of the date of taking, from said date to the date of payment; but interest shall not be allowed on so much thereof as shall have been paid into the court. No sum so paid into the court shall be charged with commissions or poundage.

Upon the application of the parties in interest, the court may order that the money deposited in the court, or any part thereof, be paid forthwith for or on account of the just compensation to be awarded in said proceeding. If the compensation finally awarded in respect of said lands, or any parcel thereof, shall exceed the amount of the money so received by any person entitled, the court shall enter judgment against the United States for the amount of the deficiency.

Upon the filing of a declaration of taking, the court shall have power to fix the time within which and the terms upon which the parties in possession shall be required to surrender possession to the petitioner. The court shall have power to make such orders in respect of encumbrances, liens, rents, taxes, assessments, insurance, and other charges, if any, as shall be just and equitable. Feb. 26, 1931, c. 307, § 1, 46 Stat. 1421.